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Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Telecommunications)
Act of 1996)
)
Telemessaging, Electronic Publishing, and)
Alarm Monitoring Services)

CC Docket No. 96-152

**REPLY COMMENTS OF BELL ATLANTIC¹ AND NYNEX² ON
FURTHER NOTICE OF PROPOSED RULEMAKING**

As the comments in this proceeding overwhelmingly show, in order to be subject to the separate subsidiary requirements of Section 274, the Bell operating company ("BOC") or its affiliate must have 1) control amounting to a right to make editorial decisions regarding the nature of content, or 2) a financial interest in content amounting to a significant ownership interest in the entity or service providing the electronic publishing.

The lone dissenter, AT&T, claims that a BOC "controls" the content if it limits the types of information to which its Internet gateway connects.³ For example,

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

² The NYNEX Telephone Companies ("NYNEX") are New York Telephone Company and New England Telephone and Telegraph Company.

³ AT&T Corp. Comments on Further Notice of Proposed Rulemaking at 2-3 ("AT&T").

AT&T would subject a BOC to the structural separation provisions of Section 274 if it blocked access to certain sites at the request of the customer or the information providers. For example, a customer may request that access to websites containing certain types of material be blocked, or a bank or stock broker may ask that only customers that it has authorized be given access to a financial website. Any such blockage would still not permit the BOC to exercise any control over the *content* of the websites. There is, therefore, no justification for AT&T's claim that blocking access to an entire website is tantamount to exercising "control" over the content contained in that website.⁴

Equally ludicrous is AT&T's contention that any form of compensation arrangement between a BOC and an information provider to which the BOC's Internet gateway service links constitutes a "financial interest" in the information provider's content and would constitute electronic publishing under Section 274.⁵ This issue arises, of course, only where the BOC itself is disseminating an information provider's content to the Internet over its basic telephone services. As the Commission has found, but AT&T ignores, a BOC is not engaged in electronic publishing where it is merely providing its customers with links to sites that are disseminated on the Internet by third parties.⁶

⁴ Under AT&T's argument, a BOC that offers to block a customer's ability to make interLATA toll calls is "controlling" toll traffic and makes the BOC an interLATA carrier. Clearly, the toll blocking services that many BOCs have offered for many years have not put them in the InterLATA business.

⁵ AT&T at 3-6.

⁶ *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 97-35 at ¶ 56 (rel. Feb. 7, 1997) (control and financial interest in content, without dissemination, does not constitute electronic publishing subject to Section 274).

Even where the BOC is disseminating an information provider's content, however, the BOC is not engaged in electronic publishing when it enters into financial arrangements that involve, for example, compensation for placing "buttons" on the BOC's gateway that allow easy access to the information provider's web pages. The fact that a BOC may receive compensation to facilitate such dissemination no more amounts to a financial interest in that content than providing a private line to facilitate a customer's access to a database gives the BOC a financial interest in that database. In either case, the BOC is merely making it easier for the customer to reach a desired electronic destination.

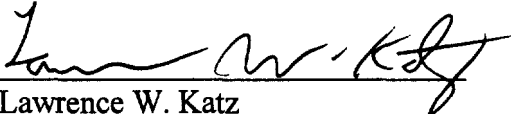
But even in cases where there is some remuneration directly tied to revenues generated from the sale of content, for instance, the Commission should find that the necessary "financial interest" should at a minimum equate to the ownership test established in Section 274(i)(8), i.e., at least a ten percent interest in the equity or gross revenues of an electronic publishing entity.⁷ The Commission should find, consistent with Congressional policy established in Section 274, that a lesser interest does not give

⁷ See Comments of Bell Atlantic and NYNEX on Further Notice of Proposed Rulemaking at 4.

the BOC a sufficient financial incentive in the electronic publishing content to invoke the structural separation requirements of Section 274.

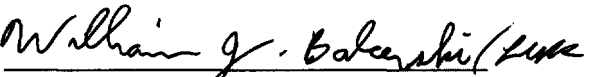
Respectfully submitted,

Edward D. Young, III
Michael E. Glover
Of Counsel


Lawrence W. Katz
Barry P. McDonald

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4862

Attorneys for the
Bell Atlantic Telephone Companies


William J. Balcerski


1095 Avenue of the Americas
New York, New York 10036
(212) 395-8148

Attorney for the
NYNEX Telephone Companies

April 25, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 1997 a copy of the foregoing "Reply Comments of Bell Atlantic and NYNEX on Further Notice of Proposed Rulemaking" was served by hand on the parties on the attached list.


Tracey M. DeVaux

Janice Myles*
Federal Communications Commission
Common Carrier Bureau
1919 M Street, NW
Room 544
Washington, DC 20554

ITS, Inc.*
2100 M Street, NW
Room 140
Washington, DC 20037

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